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VICTOR SAW SENG KEE (AS JOINT LIQUIDATOR OF LONDON BISCUITS BHD (IN LIQUIDATION)) v. WONG WENG FOO & CO & ANOR AND OTHER APPEALS

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FEDERAL COURT, PUTRAJAYA
ABU BAKAR JAIS PCA
HASNAH MOHAMMED HASHIM CJ (MALAYA)
AHMAD TERRIRUDIN MOHD SALLEH FCJ
[CIVIL APPEAL NOS: 02(f)-61-12-2024, 02(f)-62-12-2024, 02(f)-63-12-2024 & 02(f)-64-12-2024]

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13 NOVEMBER 2025

Abstract – *(i) The powers of a liquidator to administer and carry on the business of a company following the commencement of liquidation are expressly provided in para. 1(a) of Part II of the Twelfth Schedule, read together with s. 486 of the Companies Act 2016 ('CA'). Upon his appointment, the liquidator is legally entitled to carry on the business of the company for up to 180 days from the date of the winding-up order, and any further continuation requires the express sanction of the court or the committee of inspection; (ii) The circumstances under which an order for the release and discharge of a liquidator may be revoked are expressly stipulated in s. 491(4) of the CA. The court should be slow to interfere with any act or decision of the liquidators in discharging their roles in company liquidation and should only do so if it is so unreasonable and absurd that no reasonable person would have acted in that way.*

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COMPANY LAW: *Liquidators – Powers of – Provisions of para. 1(a) of Part II of Twelfth Schedule, read together with s. 486 of Companies Act 2016 – Whether liquidator could carry on business of company in liquidation beyond date of winding-up order – Whether court sanction required – Whether liquidator exercised powers reasonably – Whether exercise of powers benefited creditors*

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COMPANY LAW: *Winding up – Liquidators – Application for release and discharge of roles in company liquidation – Whether reasonable – Whether granting of release order operates as conclusive evidence of due performance of duties of liquidator – Whether liquidator obtained release order by fraud – Whether appellate interference warranted – Companies Act 2016, ss. 491(4) & 527(1)*

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London Biscuits Bhd ('LBB') was ordered to be wound up by the High Court on 13 January 2020. Lim San Peen ('LSP') of Price Waterhouse Coopers Advisory Services Sdn Bhd ('PwC') was appointed as liquidator. During the liquidation process, LSP retained the employees for several months and, upon their termination, paid them termination benefits and indemnity *in lieu*

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of notice, prioritising these payments over those to unsecured creditors. Wong Weng Foo & Co ('WWF'), the former auditor and an unsecured creditor objected to these payments and challenged LSP's conduct. Upon his retirement, LSP applied to the High Court for his release and discharge and for Victor Saw ('Victor'), also of PwC, to be appointed as his successor. WWF opposed the application and separately filed to the High Court seeking declarations of breach of duty against LSP, his removal, and to prevent Victor's appointment, instead nominated alternative liquidators. Pursuant to the High Court direction, creditors meeting was held to select a new liquidator, with Victor, Gabriel Teo and Sathiea Seelean proposed as candidates, and Victor secured an overwhelming vote. The High Court found LSP had acted reasonably and lawfully and accordingly, allowed his discharge while appointing Victor as the sole liquidator, and dismissed the WWF's application. Dissatisfied, WWF appealed to the Court of Appeal ('CA'). The CA allowed the appeals in part, holding that termination benefits and indemnity *in lieu* of notice was not entitled to priority under s. 527 of the Companies Act 2016 ('CA 2016') and set aside LSP's release and discharge. However, on 30 October 2023, the CA affirmed Victor's appointment but ordered WWF's nominee, Gabriel Teo, to be appointed as joint liquidator to safeguard the creditors' interests. Victor subsequently, filed encl. 48 before the CA, seeking a stay of the 30 October 2023 order. WWF raised a preliminary objection arguing that Victor's affidavit in support of encl. 48 was incompetent and that he lacked *locus standi*, as he had acted unilaterally without the concurrence of joint liquidator Gabriel, contrary to the CA's order, and his actions showed bias towards the former liquidator, LSP. The CA upheld WWF's objection, ruling that joint liquidators must act collectively and that Victor's attempt to act alone was contrary to law and the court's earlier order. Enclosure 48 was dismissed. Hence, the appeals herein, *inter alia*: (i) Victor's appeal on the authority of joint liquidators where one was conflicted; (ii) LBB's appeal on the role of creditors' wishes in the appointment of joint liquidators; and (iii) LSP's appeals on whether termination benefits and indemnity *in lieu* of notice constituted costs and expenses of winding up, and whether payments made in good faith but in breach of s. 527 of the CA 2016 could justify the removal or proceedings against a liquidator.

Held (allowing appeals with costs; setting aside CA order and restoring order of High Court)

Per Hasnah Mohammed Hashim CJ (Malaya) delivering the judgment of the court:

(1) *Nemo judex in re sua* literally means no one should be a judge in their own cause. A decision-maker must be impartial at all times. The courts below fell into error in disregarding that the majority of the creditors had voted for the appellant and the absence of any express ruling by the

winding-up court. The functions and powers of the liquidator may be performed and exercised by either one of the joint liquidators or by the both of them as expressly provided in s. 478(2) of the CA 2016. The subject matter of LBB's leave application and LBB's validation and stay application in the CA's orders of 30 October 2023 directly concerned the appointment of Gabriel Teo as joint liquidator of LBB. Gabriel Teo was personally conflicted in deciding matters related to the LBB's leave application and LBB's validation and stay application. (paras 26 & 29)

(2) The powers of a liquidator to administer and carry on the business of a company following the commencement of liquidation are expressly provided in para. 1(a) of Part II of the Twelfth Schedule, read together with s. 486 of the CA 2016. By the provisions, LSP, as the liquidator of LBB, was legally entitled to carry on the business of the company for up to 180 days from the date of the winding-up order. The court's sanction was obtained to allow LSP to continue business operations for an additional 180 days. LSP's decision to make the payments of termination benefits and indemnity *in lieu* of notice was reasonable and practical, facilitating the sale of LBB's assets and business as a going concern, which benefited the creditors. Further, the decision to retain LBB's employees was purely a commercially driven decision of LSP for which the court should not interfere, as there was no error of law nor had LSP in any manner or form had acted unreasonably. (paras 31-33 & 48)

(3) The court should be slow to interfere with any act or decision of the liquidators in discharging their roles in company liquidation and would only do so if it is so unreasonable and absurd that no reasonable person would have acted in that way. The circumstances under which an order for the release and discharge of a liquidator may be revoked are expressly stipulated in s. 491(4) of the CA 2016. Once a release order is granted it operates as conclusive evidence of due performance of duties of a liquidator unless it can be shown that the order was procured by fraud. The CA failed to consider the well-established legal principles governing the removal of a liquidator and instead removed LSP solely on the basis if an alleged breach of s. 527(1) of the CA 2016. In doing so, the CA failed to give due consideration to the serious and far-reaching consequences of an order for removal, which inevitably impugned LSP's professional standing and reputation. (paras 40, 45, 46 & 49)

Bahasa Melayu *Headnotes*

London Biscuits Bhd ('LBB') diperintahkan untuk digulungkan oleh Mahkamah Tinggi pada 13 Januari 2020. Lim San Peen ('LSP') dari Price Waterhouse Coopers Advisory Services Sdn Bhd ('PwC') dilantik sebagai pelikuidasi. Semasa proses likuidasi, LSP mengekalkan pekerja-pekerja untuk beberapa bulan dan, selepas penamatan, membayar faedah penamatan dan indemniti sebagai ganti notis, dengan memberi keutamaan untuk bayaran-bayaran ini lebih daripada sipiutang tanpa cagaran. Wong Weng Foo & Co ('WWF'), bekas auditor dan sipiutang tanpa cagaran, membantah bayaran-bayaran ini dan mencabar tindakan LSP. Selepas persaraannya, LSP memohon ke Mahkamah Tinggi untuk dilepaskan dan dibebaskan dan agar Victor Saw ('Victor'), juga dari PwC, dilantik sebagai penggantinya. WWF membantah permohonan tersebut dan memfailkan secara asing ke Mahkamah Tinggi memohon deklarasi pelanggaran kewajipan terhadap LSP, pemecatannya dan untuk menghalang pelantikan Victor dan sebaliknya mencadangkan pelikuidasi alternatif. Berikutan arahan Mahkamah Tinggi, mesyuarat pemiutang diadakan untuk pemilihan pelikuidasi baru, dengan Victor, Gabriel Teo dan Sathiea Seelean dicadangkan sebagai calon dan Victor berjaya mendapat undian jumlah besar. Mahkamah Tinggi mendapati LSP telah bertindak secara munasabah dan mengikut undang-undang dan dengan itu, membenarkan pelepasannya dan melantik Victor sebagai pelikuidasi tunggal dan menolak permohonan WWF. Tidak berpuas hati, WWF merayu ke Mahkamah Rayuan ('MR'). Mahkamah Rayuan membenarkan sebahagian rayuan-rayuan, memutuskan bahawa faedah penamatan dan indemniti sebagai ganti notis tidak perlu diberi keutamaan bawah s. 527 Akta Syarikat 2016 ('Akta') dan mengetepikan pelepasan dan pembebasan LSP. Walau bagaimanapun, pada 30 Oktober 2023, MR mengesahkan pelantikan Victor tetapi memerintahkan calon WWF, Gabriel Teo, dilantik sebagai pelikuidasi bersama untuk menjaga kepentingan pemiutang. Victor kemudian memfailkan lampiran 48 di MR, memohon penangguhan perintah 30 Oktober 2023. WWF membangkitkan bantahan awalan dengan menghujahkan bahawa afidavit Victor menyokong lampiran 48 tidak kompeten dan dia tiada *locus standi*, kerana telah bertindak secara sebelah pihak tanpa persetujuan pelikuidasi bersama, Gabriel, bertentangan dengan perintah MR, dan tindakan ini menunjukkan berat sebelah terhadap pelikuidasi terdahulu, LSP. Mahkamah Rayuan mengesahkan bantahan WWF, memutuskan bahawa pelikuidasi-pelikuidasi bersama perlu bertindak bersama dan cubaan Victor bertindak secara sendiri bertentangan dengan undang-undang dan perintah mahkamah. Lampiran 48 ditolak. Oleh itu, rayuan-rayuan ini, antara lain: (i) rayuan Victor berkaitan kuasa pelikuidasi bersama di mana seorang menentang; (ii) rayuan LBB berkaitan harapan pemiutang-pemiutang dalam pelantikan pemiutang bersama; dan (iii) rayuan-rayuan LSP berkaitan sama ada faedah-faedah dan indemniti sebagai ganti notis membentuk kos dan perbelanjaan penggulungan, dan sama ada bayaran-bayaran dibuat secara suci hati tetapi melanggar s. 527 Akta boleh menjustifikasi penyingkiran atau prosiding terhadap pelikuidasi.

Diputuskan (membenarkan rayuan-rayuan dengan kos; mengetepikan perintah MR dan mengembalikan perintah Mahkamah Tinggi)
Oleh Hasnah Mohammed Hashim HB (Malaya) menyampaikan penghakiman mahkamah:

(1) *Nemo judex in re sua* secara harfiah bermaksud tiada siapa pun boleh menghakimi perkara mereka sendiri. Seorang yang membuat keputusan perlu bertindak adil pada setiap masa. Mahkamah-mahkamah di bawah khilaf apabila tidak mengendahkan bahawa majoriti pemiutang mengundi untuk perayu dan tiada apa-apa keputusan jelas oleh mahkamah penggulungan. Fungsi dan kuasa pelikuidasi boleh dilaksanakan oleh salah seorang pelikuidasi bersama atau kedua-dua mereka seperti yang diperuntukkan secara jelas dalam s. 478(2) Akta. Hal perkara permohonan kebenaran LBB dan permohonan kesahan dan penangguhan LBB dalam perintah MR bertarikh 30 Oktober 2023 berkait langsung dengan pelantikan Gabriel Teo sebagai pelikuidasi bersama LBB. Gabriel Teo berkonflik secara peribadi dalam memutuskan perkara-perkara berkaitan permohonan kebenaran LBB dan permohonan kesahan dan penangguhan LBB.

(2) Kuasa seorang pelikuidasi untuk mentadbir dan menjalankan perniagaan syarikat berikutan permulaan likuidasi diperuntukkan langsung dalam perenggan 1(a) Bahagian II Jadual Keduabelas, dibaca bersama-sama s. 486 Akta. Menurut peruntukan ini, LSP, sebagai pelikuidasi LBB, berhak dari segi undang-undang untuk menjalankan perniagaan syarikat tersebut sehingga 180 hari dari tarikh perintah penggulungan. Persetujuan mahkamah telah diperoleh untuk membenarkan LSP meneruskan operasi perniagaan untuk 180 hari tambahan. Keputusan LSP untuk membuat bayaran-bayaran faedah penamatan dan indemniti sebagai ganti notis adalah munasabah dan praktikal, memudahkan jualan aset-aset dan perniagaan LBB sebagai usaha berterusan, yang menguntungkan pemiutang-pemiutang. Selanjutnya, keputusan untuk mengekalkan pekerja-pekerja LBB adalah semata-mata keputusan yang didorong secara komersial oleh LSP dan mahkamah tidak wajar campur tangan kerana tiada kekhilafan di sisi undang-undang dan LSP tidak, dalam apa-apa cara atau bentuk, bertindak secara tidak munasabah.

(3) Mahkamah tidak boleh campur tangan dalam apa-apa tindakan atau keputusan pelikuidasi apabila melepaskan peranan mereka dalam penggulungan syarikat dan akan hanya berbuat demikian jika itu adalah amat tidak munasabah dan tidak masuk akal di mana seorang yang berfikiran waras tidak akan mengambil tindakan sedemikian. Hal keadaan di mana perintah pelepasan dan pembebasan pelikuidasi boleh dibatalkan diperuntukkan secara jelas dalam s. 491(4) Akta. Sebaik sahaja perintah pelepasan diberikan, itu membentuk keterangan muktamad pelaksanaan wajar kewajipan pelikuidasi kecuali boleh

ditunjukkan bahawa perintah itu diperoleh secara fraud. Mahkamah Rayuan gagal mempertimbangkan prinsip matan berkaitan penyingkiran pelikuidasi dan sebaliknya menyingkir LPS semata-mata atas dasar kononnya melanggar s. 527(1) Akta. Dalam berbuat demikian, MR gagal memberi pertimbangan sewajarnya pada akibat serius dan meluas perintah penyingkiran itu, yang akhirnya menafikan kedudukan professional dan reputasi LSP.

Case(s) referred to:

Indo (M) Engineering Co Bhd (In Receivership) v. Muniandy Rengasamy & Ors [1990] 2 CLJ 930; [1990] 1 CLJ (Rep) 123 SC ***(dist)***

N Chanthiran Nagappan v. Kao Che Jen [2023] 7 CLJ 677 FC ***(refd)***

Ng Yok Gee & Anor v. CTI Leather Sdn Bhd; Metro Brilliant Sdn Bhd & Ors (Interveners) [2006] 3 CLJ 360 HC ***(foll)***

Shamsiah Ahmad Sham v. Public Services Commission, Malaysia & Anor [1991] 1 CLJ 23; [1991] 1 CLJ (Rep) 419 SC ***(refd)***

Tan Kim Chuan v. Tan Kim Tian & Ors And Another Appeal [2022] 10 CLJ 503 FC ***(refd)***

Wong Sin Fan & Ors v. Ng Peak Yam & Anor [2013] 3 CLJ 17 FC ***(foll)***

Legislation referred to:

Companies Act 1965 (repealed), s. 292(1)

Companies Act 2016, ss. 478(2), 486, 487(3), 491(4), 521, 527(1)(a), (b), Twelfth Schedule, Part II, para. 1(a)

(Civil Appeal No: 02(f)-61-12-2024)

For the appellant - Christopher Leong, Jacky Loi, Calvin Wong, Vivian Lim & Lim Jin Wen; M/s TY Teh & Partners

For the 1st respondent - Steven Tan Chee Qian, Max Chuah Chern Tee & Low Han Shin; M/s Chuah Qian & Partners

For the 2nd respondent - Lim Chee Wee, Kwan Will Sen, Pang Huey Lynn & Manveer Singh Bagry; M/s Lim Chee Wee Partnership

(Civil Appeal No: 02(f)-62-12-2024)

For the appellant - Lim Chee Wee, Kwan Will Sen, Pang Huey Lynn & Manveer Singh Bagry; M/s Lim Chee Wee Partnership

For the respondent - Steven Tan Chee Qian, Max Chuah Chern Tee & Low Han Shin; M/s Chuah Qian & Partners

For the interveners HSBC Bank Malaysia Bhd, Alliance Bank Malaysia Bhd, United Overseas Bank (Malaysia) Bhd, Malaysian Trustees Bhd & Bangkok Bank Bhd - Benjamin John Dawson, Koh San Tee & Nor Syazana Jamaluddin; M/s Benjamin Dawson

For the interveners Malayan Banking Bhd & OCBC Bank (Malaysia) Bhd - Ng Hooi Huang, Lim Jia Wing & Tan Wey May; M/s Shook Lin & Bok

(Civil Appeal No: 02(f)-63-12-2024 & 02(f)-64-12-2024)

For the appellant - Rabindra S Nathan, Sathya Kumardas, Saresh Mahendaren, Mohammed Daud Sulaiman & Chew Mingyih; M/s Shearn Delamore & Co

For the respondent - Steven Tan Chee Qian, Max Chuah Chern Tee & Low Han Shin; M/s Chuah Qian & Partners

[Editor's note: For the Court of Appeal judgment, please see Wong Weng Foo & Co v. London Biscuits Bhd (In Liquidation) [2025] 3 CLJ 384 (overruled); For the High Court judgment, please see Re: London Biscuits Bhd (In Liquidation) [2022] CLJU 2770; [2022] 1 LNS 2770 (affirmed).]

Reported by S Barathi

JUDGMENT

Hasnah Mohammed Hashim CJ (Malaya):

[1] These are the appeals by the appellants arising from the winding up of London Biscuits Berhad (LBB). The core issue before this court concerns the scope of liquidators' powers and liabilities under the Companies Act 2016 (CA 2016), specifically whether one joint liquidator may act alone if the other is conflicted, and the extent to which creditors' wishes must guide the court in appointing liquidators.

[2] There are four appeals before this court, namely: Appeal 61 (Victor Saw's appeal on the authority of joint liquidators where one is conflicted), Appeal 62 (LBB's appeal on the role of creditors' wishes in the appointment of joint liquidators), and Appeals 63 and 64 (Lim San Peen's appeals on whether termination benefits and indemnity *in lieu* of notice constitute costs and expenses of winding up, and whether payments made in good faith but in breach of s. 527 of the CA 2016 can justify removal or proceedings against a liquidator).

[3] We heard oral submissions by all learned counsels representing the respective parties, and at the end of those submissions, we indicated that we needed time to consider the respective submissions. We have now reached our decision. What follows below are our deliberations on the issues raised and our reasons as to why we have so decided.

Questions Of Law

[4] On 9 December 2024, leave to appeal was granted to the appellants on the following questions of law (QOL).

Victor Saw's Appeal (Appeal 61)

(i) bearing in mind the principle of *nemo judex in re sua* (a man should not be a judge in his own cause), in the event a joint liquidator is in a position of conflict of interest, whether direct or indirect, in a subject matter, can the other non-conflicted joint liquidator/s act pursuant to s. 478(2) of the Companies Act 2016, without reference to or concurrence of the conflicted joint liquidator?

LBB's Appeal (Appeal 62)

(i) whether the court must to take into account the wishes of a majority of creditors and/or contributories, in number and/or in value, in deciding on the appointment of an additional liquidator as joint liquidator?

(ii) whether the court's appointment of an additional liquidator as joint liquidator is appropriate and/or suitable in circumstances where a majority of the creditors and/or contributories, in number and/or in value, of the said company have voted in favour of a single liquidator candidate, and a joint appointment was never contemplated and voted on?

(iii) whether it is desirable and/or beneficial that, before the court considers appointing a joint liquidator in addition to an existing sole liquidator, prior notice be given to the creditors and contributories for them to be heard and/or to seek their views in that regard?

(iv) whether in a case where the court is considering appointing a joint liquidator in addition to an existing sole liquidator whose appointment was made after the views of the creditors and contributories have been sought pursuant to s. 521 of the Companies Act 2016, the same mechanism should be resorted to?

Lim San Peen's Appeal (Appeals 63 And 64)

(i) where a liquidator has obtained authority of court under Twelfth Schedule Part II para. 1(a) to carry on the business of the company, whether "cost and expenses of winding up" under limb 1(a) of s. 527 of the Companies Act 2016 can include termination benefits and indemnity *in lieu* of notice payable to employees who are continued to be employed post winding up of a company as part of the carrying on of the business of the company?

(ii) whether the making of a payment by a liquidator of a company in good faith but which might be in breach of s. 527 of the Companies Act 2016 can constitute a ground on which the liquidator can be removed for cause?

(iii) whether the making of a payment by a liquidator of a company in good faith but which might be in breach of s. 527 of the Companies Act 2016 can constitute a ground on which leave to commence legal proceedings can be granted against the liquidator?

Facts

[5] The facts in this case are largely undisputed and may be stated briefly for the purposes of these appeals. LBB, incorporated as a private company and later listed in 2000, was ordered to be wound up by the High Court on 13 January 2020. Mr Lim San Peen (LSP) of Price Waterhouse Coopers Advisory Services Sdn Bhd (PwC) was appointed as liquidator. During the liquidation process, LSP retained the employees for several months and, upon their termination, paid them termination benefits and indemnity *in lieu* of notice, prioritising these payments over those to unsecured creditors.

A Wong Weng Foo & Co (WWF), the former auditor and an unsecured creditor, admitted in the sum of RM393,571, objected to these payments and challenged LSP's conduct.

[6] On 6 May 2021, LSP applied to the High Court in Post Winding Up Application No: WA-28PW-139-05-2021 (PW139) for his release and
B discharge upon retirement, and for Victor Saw, also of PwC, to be appointed as his successor. WWF opposed the application and separately filed to the High Court in Post Winding Up Application No: WA-28PW-282-10-2021 (PW282) seeking declarations of breach of duty against LSP, his removal, and to prevent Victor's appointment, instead nominating alternative
C liquidators.

[7] On 9 December 2021, the High Court directed that meetings be held to select a new liquidator, with Victor, Gabriel Teo, and Sathiea Seelean proposed as candidates. At the creditors' meeting on 24 February 2022, an overwhelming majority (98.5% in value and seven out of eight in number)
D voted for Victor, while Gabriel Teo secured only a negligible share. Both applications were heard together, and on 3 October 2022, the High Court found LSP had acted reasonably and lawfully, and accordingly allowed his discharge while appointing Victor as the sole liquidator, and dismissed the WWF's application.

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[8] Dissatisfied, WWF appealed to the Court of Appeal, namely Civil Appeal No: W-02(A)-1991-10-2022 (Appeal 1991), an appeal against the High Court's decision in dismissing WWF's application in PW282, and Civil Appeal No: W-02(A)-1991-10-2022 (Appeal 1992), an appeal against the High Court's decision in allowing LSP's application in PW139. On
F 30 October 2023, the Court of Appeal allowed the appeals in part, holding that termination benefits and indemnity *in lieu* of notice was not entitled to priority under s. 527 of the Companies Act 2016 and setting aside LSP's release and discharge. However, the court affirmed Victor's appointment but ordered WWF's nominee, Gabriel Teo, to be appointed as joint liquidator
G to safeguard creditor interests.

[9] Subsequently, Victor filed encl. 48 in Appeal 1992 before the Court of Appeal, seeking a stay of the Court of Appeal order dated 30 October 2023. The orders sought are to allow Victor to act unilaterally to pursue his notice of motions for leave to appeal at the Federal Court and any subsequent
H appeal without reference to the other liquidator (joint liquidator) appointed, Gabriel. WWF raised a preliminary objection arguing that Victor's affidavit in support of encl. 48 was incompetent and that he lacked *locus standi*, as he had acted unilaterally without the concurrence of joint liquidator Gabriel, contrary to the COA's order, and his actions showed bias towards the former
I liquidator, LSP.

[10] On 24 July 2024, the Court of Appeal upheld the objection by WWF, ruling that joint liquidators must act collectively and that Victor's attempt to act alone was contrary to law and the court's earlier order. Enclosure 48 was dismissed with costs personally against Victor. Dissatisfied, the parties appealed to the Federal Court.

Analysis And Decision

Victor Saw's Appeal (Appeal 61)

[11] In Appeal 61, the issue for determination is whether a joint liquidator in a position of conflict of interest can act pursuant to s. 478(2) of the CA without any reference to the conflicted joint liquidator. The QOL posed to this court is as follows:

> Bearing in mind the principle of *nemo judax in re sua* (a man should not be a judge in his own cause), in the event a joint liquidator is in a position of conflict of interest, whether direct or indirect, in a subject matter, can the other non-conflicted joint liquidator/s act pursuant to section 478(2) of the Companies Act 2016, without reference to or concurrence of the conflicted joint liquidator?

[12] Section 478(2) of the CA reads:

> (2) If two or more liquidators are appointed by the Court, unless the Court expressly provides otherwise –
>
> (a) the functions or the powers of the liquidators may be performed or exercised by any one of them or by both or all of them jointly; and
>
> (b) A reference to the liquidator shall be a reference to any one of the liquidators.

[13] The section expressly provides that in the event two or more liquidators are appointed by the court, the function and/or the powers of the joint liquidators can be exercised by any one of the liquidators or jointly by both the appointed joint liquidators.

[14] The High Court granted an order winding up LBB on 13 January 2020 and appointed LSP as the liquidator of LBB. As the liquidator, LSP applied to the High Court and sought the following orders:

(i) Victor Saw, be appointed liquidator of LBB; and

(ii) upon the appointment of Victor Saw, be discharged and released as liquidator of LBB.

[15] WWF, the former auditor of LBB and also a creditor of LBB had submitted a proof of debt (POD) for the sum of RM393,571.85, which was admitted in full. On 6 October 2021, WWF applied in court for the following orders:

A (i) various declaratory orders, *inter alia*, in respect of alleged wrongful, unlawful, and defective conduct by LSP as liquidator of LBB;

(ii) LSP be removed as the liquidator of LBB;

(iii) Victor Saw be prohibited from being appointed as the new liquidator of
B LBB; and

(iv) Gabriel Teo Chun be appointed as the new liquidator of LBB, in the alternative, that Sathiea Seelean a/l Manickam be appointed as the new liquidator of LBB.

C **[16]** The High Court directed LSP to hold meetings of creditors and contributories to decide on the choice of candidate to replace him as the liquidator of LBB, given that there were three liquidators suggested by the creditors. On 24 February 2022, an overwhelming majority of the creditors voted for the appointment of Victor Saw to replace LSP. Based on the records the creditors were not asked to vote on a joint appointment of liquidators,
D nor that was there any issue of joint appointment raised. The High Court then made the following orders:

(i) LSP be discharged and released as the liquidator of LBB; and

(ii) Victor Saw, was appointed as the new liquidator of LBB.

E **[17]** Aggrieved with the decision of the High Court, WWF appealed to the COA. The COA made the following orders and allowed the WWF's appeal in part, as follows:

(i) directed that LSP not to be discharged and released as liquidator of LBB;

F (ii) affirmed the appointment of Victor Saw as the liquidator of LBB;

(iii) granted leave to WWF to commence proceedings for the removal of LSP as the liquidator of LBB; and

(iv) appointed Gabriel Teo Chun as a joint liquidator of LBB together with
G Victor Saw.

[18] Learned counsel for Victor Saw highlighted that the creditors who had by majority appointed a single liquidator for the liquidation of LBB had no opportunity to put forward their views or raise their concerns to the Court of Appeal on the issue of the appointment of joint liquidators. Thus, the
H Court of Appeal did not have the benefit of the views and wishes of the creditors on the issue of appointment of the joint liquidators.

[19] Further, the liquidation of LBB was already at an advanced stage, where all assets of LBB have already been realised, and the appointment of a joint liquidator would delay the liquidation process and increase the cost
I of liquidation.

[20] In the Court of Appeal order dated 30 October 2023, there was no specific ruling or directions by the court on the manner in which the functions and powers of the joint liquidators are to be exercised. In the absence of any specific ruling by the court, the functions and powers of liquidators may be performed and exercised by either one of the liquidators as expressly provided under s. 478(2) of the CA. On 29 November 2023, LBB applied for leave to appeal to the Federal Court against the Court of Appeal Order dated 30 October 2023 in respect of the removal application. LBB had on 8 December 2023 applied in the Court of Appeal a notice of motion for, *inter alia*, the following orders:

(i) that the appellant be allowed to file and give instructions in relation to the application and the LBB's leave application, and if leave is granted, in any appeal to the Federal Court, without requiring the approval and/or consent of the joint liquidator, namely Gabriel Teo Chun; and

(ii) that the Court of Appeal Order dated 30 October 2023 be stayed pending full and final determination of the LBB's leave application, and if such leave is granted, any appeal to the Federal Court.

[21] The issue concerning the appointment of Gabriel Teo Chun as joint liquidator of LBB pursuant to the Court of Appeal Order dated 30 October 2023 is a subject matter of LBB's leave application, as well as LBB's validation and stay application.

[22] It is the submission of learned counsel for the appellant in this appeal that the QOL must therefore be answered in the affirmative based on the principle of *nemo judex in re sua* (a man should not be a judge in his own cause). A liquidator appointed should not be in a position of conflict, must be impartial and free from bias. Learned counsel for the appellant further argued that the mere fact that Gabriel Teo Chun was appointed as a joint liquidator is insufficient to constitute an express ruling on the manner in which the functions and powers are to be performed and exercised. There must be something expressed or, by necessary implication, in the order or resolution appointing two or more liquidators that a function or power must only be exercised by either two or more liquidators or all liquidators appointed. Therefore, in the absence of any such express ruling, the functions and powers of the liquidators may be performed and exercised by either one of the joint liquidators or by the both of them pursuant to s. 478(2) of the CA. In this regard, the appellant ought to be permitted to exercise the powers of the liquidators without obtaining the concurrence of Gabriel Teo Chun.

[23] This is further fortified in circumstances where Gabriel Teo Chun is personally conflicted in deciding matters related to the LBB's leave application and LBB's validation and stay application. The subject matter of LBB's leave application and LBB's validation and stay application is the Court of Appeal's orders made on 30 October 2023 which directly concern the appointment of Gabriel Teo Chun as joint liquidator of LBB.

[24] In response, learned counsel for the respondent argued that even if there is a conflict of interest, the function and power of the appellant and Mr Gabriel Teo is joint, therefore the appropriate approach is for the appellant to apply for direction from the winding up court pursuant to s. 487(3) of the CA, which provides:

> The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.

[25] It is further argued in submission that LSP has been taking the inconsistent position, in that the appellant had sought for leave to appeal as well as the stay without requiring approval from Gabriel Teo Chun as the joint liquidator. This is further fortified in his affidavit in support, where the appellant affirmed that he retains residuary power to file the motion for leave and motion for stay.

[26] *Nemo judex in re sua* is a Latin phrase that literally means no one should be a judge in their own cause. A decision-maker must be impartial at all times. It is a core principle of natural justice and law, which emphasises that decision-makers must remain impartial and avoid any bias or personal stake in a matter. To promote fairness and maintain public trust, if a judge or decision-maker has a conflict of interest, they are obliged to step aside and not participate in the proceedings and must recuse themselves from participating in the proceedings.

[27] Their Lordships in the Supreme Court case of *Shamsiah Ahmad Sham v. Public Services Commission, Malaysia & Anor* [1991] 1 CLJ 23; [1991] 1 CLJ (Rep) 419; [1990] 2 ILR 525 articulated:

> Natural justice is a concept which involves common law rules, namely, (a) the right to be heard (*audi alteram partem*): the principles that a decision-maker must afford an opportunity to be heard to a person whose interests will be adversely affected by the decision, and (b) the rule against bias *(nemo debet esse judex in propria sua causa)*: the principle that a decision-maker must be disinterested or unbiased in the matter to be decided. The classical statement of the fair hearing rule of course comes from the judgment of Lord Loreburn in *Board of Education v. Rice* [1911] AC 179 at 182:
>
> > ... they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view.

[28] Part IV of the CA regulates the processes and procedures of the winding up of the company to ensure that not only the interests of the company being wound up or a company that has been wound up is safeguarded, but also the creditors of the company. Subdivision 8 of Part IV regulates and controls the liquidators to be appointed or appointed in a winding up. The regulation and control by the winding-up court is of utmost importance to ensure that all interests of those affected by the winding-up are safeguarded.

[29] Having carefully analysed the law and the facts we concur with learned counsel for the appellant's submission that the courts below fell into error in disregarding that the majority of the creditors that had voted for the appellant and the absence of any express ruling by the winding up court. The functions and powers of the liquidator may be performed and exercised by either one of the joint liquidators or by the both of them as expressly provided in s. 478(2) of the CA. Further, Gabriel Teo Chun is personally conflicted in deciding matters related to the LBB's leave application and LBB's validation and stay application. The subject matter of LBB's leave application, and LBB's validation and stay application is the Court of Appeal's orders made on 30 October 2023 which directly concern the appointment of Gabriel Teo Chun as joint liquidator of LBB.

[30] For the foregoing reasons, QOL1 in Appeal 61 is answered in the affirmative.

LBB's Appeal (Appeal 62) And Lim San Peen's Appeal (Appeals 63 And 64)

[31] The powers of a liquidator to administer and carry on the business of a company following the commencement of liquidation are expressly provided in para. 1(a) of Part II of the Twelfth Schedule, read together with s. 486 of the CA, which reads:

> The liquidator may, with the authority either of the Court or of the committee of inspection –
>
> (a) **carry on the business of the company so far as is necessary for the beneficial winding up of the company,** but the authority shall not be necessary to so carry on the business during the one hundred and eighty days after the date of the winding up order; (emphasis added)

[32] By the provisions of the Act as stated above, LSP, as the liquidator of LBB, is legally entitled to carry on the business of the company for up to 180 days from the date of the winding-up order. The continuation of such business beyond this period, however, requires the express sanction of the court or the committee of inspection. LSP, upon his appointment as liquidator, exercised his discretion to continue operating the business of LBB on the basis that a going concern sale would yield the highest possible return to creditors. LSP, as the liquidator, recognised the ongoing viability and

strategic benefits of continued operations. This decision by LSP to do so was made in light of several commercial considerations, which would not only benefit LBB but also the creditors:

(i) the plant and machinery had to be kept operational to preserve asset value;

(ii) the business had existing orders to fulfil;

(iii) goodwill needed to be maintained; and

(iv) there was active interest from potential buyers seeking to acquire the business as a complete, functional unit rather than through piecemeal liquidation.

[33] The court's sanction was obtained on 10 July 2020, allowing LSP to continue business operations for an additional 180 days. The High Court was of the view, and based on the facts and evidence before it, that LSP's decision to carry on the business operations of LBB was commercially justified to preserve value and maximise recovery for creditors. This finding of the High Court was not disturbed by the Court of Appeal.

[34] Regrettably, the Court of Appeal failed to consider the explanation given by LSP in his affidavit in support dated 19 June 2020, which was in respect of the application to obtain a validation order, regarding the authority to continue carrying on the business of LBB. Whilst the Court of Appeal correctly identified s. 527(1) of the CA as the governing provision, it erred in restricting its analysis solely to limbs (b) and (c) of the aforesaid section, despite recognising the possible applicability of the other limbs thereunder. In particular, to consider whether the payments could have been properly classified as "costs and expenses of the winding up" as prescribed under s. 527(1)(a) and instead conclude that such an act falls under s. 527(1)(b) of the CA.

[35] It is worthwhile to reproduce s. 527 of the CA insofar as it is relevant for the purpose of this appeal:

> (1) Subject to this Act, in a winding up, there shall be paid in priority to all other unsecured debts –
>
> (a) firstly, the costs and expenses of the winding up, including the taxed costs of a petitioner payable under section 468, the remuneration of the liquidator and the costs of any audit carried out under section 514;
>
> (b) secondly, all wages or salary, whether or not earned wholly or in part by way of commission, including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, of any employee not exceeding fifteen thousand ringgit or such other

amount as may be prescribed whether for time or piecework in respect of services rendered by him to the company within a period of four months before the commencement of the winding up;

(c) thirdly, all amounts due in respect of worker's compensation under any written law relating to worker's compensation accrued before the commencement of the winding up;

(d) fourthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, accrued in respect of any period before the commencement of the winding up;

(e) fifthly, all amounts due in respect of contributions payable during the twelve months next before the commencement of the winding up by the company as the employer of any person under any written law relating to employees social security contribution and superannuation or provident funds or under any scheme of superannuation or retirement benefit which is an approved scheme under the federal law relating to income tax; and

(f) sixthly, the amount of all federal tax assessed under any written law before the date of the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired.

(2) The debts in each class specified in subsection (1) shall rank in the order specified but debts of the same class shall rank *pari passu* and shall be paid in full, unless the property of the company is insufficient to meet the debts, in which case the payment shall be reduced and the rate of reduction shall be in equal proportion.

(3) Where any payment has been made to any employee of the company on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(4) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subparagraphs (d) and (e) and any amount payable in priority by virtue of subsection (3), those debts shall have priority over the claims of the holders of debentures under any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

(5) Where the company is under a contract of insurance, entered into before the commencement of the winding up, insured against liability to third parties, then if any such liability is incurred by the company, either

A before or after the commencement of the winding up, and an amount in respect of that liability is or has been received by the company or the liquidator from the insurer, the amount shall, after deducting any expenses of or incidental to getting in the amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that B liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).

(6) If the liability of the insurer to the company is less than the liability of the company to the third party, nothing in subsection (5) shall limit the rights of the third party in respect of the balance.

C (7) Subsections (5) and (6) shall have effect notwithstanding any agreement to the contrary entered into after the commencement of this Act.

(8) Notwithstanding subsection (1) –

D (a) paragraph (c) of that subsection shall not apply in relation to the winding up of a company in any case where the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the compensation has on the reconstruction or amalgamation been preserved to the person entitled thereto, or where the company has E entered into a contract with an insurer in respect of any liability under any law relating to workers compensation; and

(b) where a company has given security for the payment or repayment of any amount to which paragraph (1)(7) relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting from the balance the net amount realised from F such security.

(9) Where in any winding up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor G has indemnified a liquidator, have been recovered, the Court may make such order as it deems just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by the creditors in so doing.

H (10) Subject to this Act, all debts proved in a winding up shall be paid *pari passu.*

[36] The payments by LSP made as liquidator were to employees who were retained post-liquidation for the purpose of carrying on the business of LBB pursuant to para. 1(a) of Part II of the Twelfth Schedule of the CA:

I

1. The liquidator may, with the authority either of the Court or of the committee of inspection –

(a) carry on the business of the company so far as is necessary for the beneficial winding up of the company, but the authority shall not be necessary to so carry on the business during the order;

(b) subject to the priorities under section 527, pay any class of creditors in full;

(c) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or where the company may be rendered liable;

(d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims, present or future, certain or contingent, ascertained or sounding only in damages subsisting or supposed to subsist between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect of the call, debt, liability or claim; and

(e) compromise any debt due to the company other than calls and liabilities for calls and a debt where the amount claimed by the company to be due to the company exceeds ten thousand ringgit.

2. The liquidator may apply to the Court or the committee of inspection for the authority given for the purpose of subparagraph 1(e) without additional approval provided that the debts referred to in that paragraph does not exceed fifty thousand ringgit. (emphasis added)

[37] The Court of Appeal found support in the case of *Indo (M) Engineering Co Bhd (In Receivership) v. Muniandy Rengasamy & Ors* [1990] 2 CLJ 930; [1990] 1 CLJ (Rep) 123; [1990] 3 MLJ 301. However, in that case, the company was under receivership and not liquidation. In *Indo (M) Engineering* receivers were appointed under a debenture. The receivers had terminated the services of employees, and the issue before the court was whether the termination benefits and *in lieu* of notice took priority over debts owed to the secured creditor.

[38] The Supreme Court in *Indo (M) Engineering* found that these payments did not fall within the definition of "wages and salaries" under s. 292(1) of the CA 1965 (s. 527(1) of the CA 2016). However, the Supreme Court did not address whether such payments, in the context of liquidation and employee retention for the benefit of the liquidation process, could be considered part of the "costs and expenses of winding up".

[39] It is our judgment that in the appeal before us, on the facts, and the issues can be distinguished from *Indo (M) Engineering* as it involves a company that has been wound up and the continuation of the company's business under the statutory authority as conferred by Part II of the Twelfth Schedule of the CA which allows a liquidator, with the court's sanction or committee's approval, to carry on the company's business to facilitate a beneficial winding-up. Therefore, the Court of Appeal's reliance on *Indo (M) Engineering* was, with respect, misplaced.

[40] The court should be slow to interfere with any Act or decision of the liquidators in discharging their roles in company liquidation and should only do so if it is so unreasonable and absurd that no reasonable person would have acted in that way as enunciated in *Ng Yok Gee & Anor v. CTI Leather Sdn Bhd; Metro Brilliant Sdn Bhd & Ors (Interveners)* [2006] 3 CLJ 360.

[41] The Federal Court in *Wong Sin Fan & Ors v. Ng Peak Yam & Anor* [2013] 3 CLJ 17 emphasised that the court should not interfere unless the conduct of the liquidator was so unreasonable. Zulkefli Ahmad Makinudin CJ (Malaya) delivering the judgment of the court elucidated:

> The principles of law governing an application to remove a provisional liquidator (or liquidator) are well set out as in the case of *Ng Yok Gee & Anor v. CTI Leather Sdn Bhd; Metro Brilliant Sdn Bhd & Ors (Interveners)* [2006] 3 CLJ 360 and include the following:
>
> (a) The court does not have an unfettered discretion, as cause must be shown before a liquidator can be removed. The position is not the same as it is when a liquidator is first appointed and the court may choose between two or more competing candidates.
>
> (b) The normal grounds for removal are that the liquidator has a personal unfitness, has failed to act impartially or is in a position where his duty and interest are in conflict.
>
> (c) The removal of the liquidator must be in the interest of all those who are interested in the company being liquidated. Thus, all the contributories and creditors of the company being liquidated must support such application to remove the liquidator.
>
> [24] Based on the above principles of law, we are of the view that the court should be slow to interfere with any act or decision of the liquidators in discharging their roles in company liquidation and will do so only if it is so unreasonable and absurd that no reasonable person would have acted in that way. The court will not interfere with the decision simply because its opinion might differ from that of the liquidator, (see the case of *Andrew Christopher Chuah Choong Eng Chuan v. Ooi Woon Chee & Anor* [2007] 2 CLJ 405).

[42] *Wong Sin Fan & Ors* remains the leading Federal Court authority on the removal of liquidators.

[43] We find it necessary to reiterate the following guiding principles that were established in both *Wong Sin Fan & Ors* as well in CTI as follows: A

(i) a liquidator appointed by the court may only be removed by the court "on cause shown";

(ii) the court does not have unfettered discretion; cause must be demonstrated for the removal of a liquidator; B

(iii) the common grounds for removal include personal unfitness, failure to act impartially, or a conflict between duty and interest; and

(iv) removal must be in the best interests of all parties involved, with support from both contributories and creditors. C

[44] This court in *Tan Kim Chuan v. Tan Kim Tian & Ors And Another Appeal* [2022] 10 CLJ 503 articulated with clarity the role of the liquidator and the importance of minimal interference by the court:

> [46] ... A liquidator is an independent entity and is the guardian of the assets of a wound-up company. Hence, any change of an agreed arrangement must be considered with great care, especially since there is a difference of views amongst the contributories impacting the whole liquidation process of the wound-up company. D
>
> [47] The court should be slow to interfere with any act or decision of the liquidators in discharging their roles in company liquidation and will do so only if it is so unreasonable and absurd that no reasonable person would have acted in that way (see: *Ng Yok Gee & Anor v. CTI Leather Sdn Bhd; Metro Brilliant Sdn Bhd & Ors (Interveners)* [2006] 3 CLJ 360). E
>
> [48] The Federal Court in *Wong Sin Fan & Ors v. Ng Peak Yam & Anor* [2013] 3 CLJ 17 emphasised that the court should not interfere unless the conduct of the liquidator was so unreasonable and absurd that no reasonable person would so act. The court will not interfere with the liquidator's decision simply because its opinion might differ from that of the liquidator. F

[45] Therefore, the courts are generally reluctant to refuse such a resignation by a liquidator. The circumstances under which an order for the release and discharge of a liquidator may be revoked are expressly stipulated in s. 491(4) of the CA: G

> (4) An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact. H

[46] This provision underscores that once a release order is granted, it operates as conclusive evidence of due performance of duties of a liquidator unless it can be shown that the order was procured by fraud. I

[47] The threshold in granting leave to commence proceedings against a liquidator, who is an officer of the court, was most recently considered by the Federal Court in the case of *N Chanthiran Nagappan v. Kao Che Jen* [2023] 7 CLJ 677; [2023] 5 MLJ 284. In this case, an action was brought by a contributory against the liquidator for breach of duty. The sole issue in this appeal is whether leave of the court is required for the commencement of proceedings against a court-appointed liquidator. The Federal Court summarised the principles in granting leave. A court-appointed liquidator is an officer of the court, and hence leave of the winding-up court should be obtained before proceedings can be commenced against him.

[48] We agree with the arguments of the learned counsel for the respondent that LSP's decision to make the payments of termination benefits and indemnity *in lieu* of notice was reasonable and practical, facilitating the sale of LBB's assets and business as a going concern, which benefited creditors. Further, the decision to retain LBB's employees is purely a commercially driven decision of LSP for which the court should not interfere, as there was no error of law nor had LSP in any manner or form had acted unreasonably.

[49] The Court of Appeal failed to consider the well-established legal principles governing the removal of a liquidator and instead removed LSP solely on the basis of an alleged breach of s. 527(1) of the CA. In doing so Court of Appeal failed to give due consideration to the serious and far-reaching consequences of an order for removal, which inevitably impugns LSP's professional standing and reputation.

[50] Thus, we answer the questions of law posed to us for determination as follows.

LBB's Appeal (Appeal 62)

(i) whether the court must to take into account the wishes of a majority of creditors and/or contributories, in number and/or in value, in deciding on the appointment of an additional liquidator as joint liquidator?

Affirmative;

(ii) whether the court's appointment of an additional liquidator as joint liquidator is appropriate and/or suitable in circumstances where a majority of the creditors and/or contributories, in number and/or in value, of the said company have voted in favour of a single liquidator candidate, and a joint appointment was never contemplated and voted on?

Negative;

(iii) whether it is desirable and/or beneficial that, before the court considers appointing a joint liquidator in addition to an existing sole liquidator, prior notice be given to the creditors and contributories for them to be heard and/or to seek their views in that regard?

Affirmative; and

(iv) whether in a case where the court is considering appointing a joint liquidator in addition to an existing sole liquidator whose appointment was made after the views of the creditors and contributories have been sought pursuant to s. 521 of the Companies Act 2016, the same mechanism should be resorted to?

Affirmative.

Lim San Peen's Appeal (Appeals 63 And 64)

(i) where a liquidator has obtained authority of court under Tweltfh Schedule Part II, para. 1(a) to carry on the business of the company, whether "cost and expenses of winding up" under limb 1(a) of s. 527 of the Companies Act 2016 can include termination benefits and indemnity *in lieu* of notice payable to employees who are continued to be employed post winding up of a company as part of the carrying on of the business of the company?

Affirmative;

(ii) whether the making of a payment by a liquidator of a company in good faith but which might be in breach of s. 527 of the Companies Act 2016 can constitute a ground on which the liquidator can be removed for cause?

Negative; and

(iii) whether the making of a payment by a liquidator of a company in good faith but which might be in breach of s. 527 of the Companies Act 2016 can constitute a ground on which leave to commence legal proceedings can be granted against the liquidator?

Negative.

[51] Based on the reasons above and in light of the above settled principles, we found merits in the issues raised by the appellants. Having carefully considered the submissions of all parties and for all the reasons aforesaid, we allowed the appeals with cost, set aside the COA order and restore the order of the High Court.

[52] My learned brothers Justice Abu Bakar Jais, PCA and Justice Ahmad Terriruddin Mohd Salleh have read the judgment in draft and have expressed their agreement with it.